GALWAY ELECTION (JUDGMENTS ON SPECIAL CASE).

RETURN to an Order of the Honourable The House of Commons, dated 13 June 1872;—*for*,

COPY "of the JUDGMENTS on the SPECIAL CASE laid by Mr. Justice *Keogh* before the COURT of COMMON PLEAS in *Ireland*, respecting the late GALWAY ELECTION, pronounced by the several JUDGES of that Court."

(*Sir Colman O'Loghlen.*)

Ordered, by The House of Commons, *to be Printed*, 2 *July* 1872.

MINUTES OF PROCEEDINGS

TAKEN BEFORE

THE JUDGES OF HER MAJESTY'S COURT OF COMMON PLEAS IN IRELAND,

The Right Honourable the Lord Chief Justice MONAGHAN,
The Right Honourable Mr. Justice KEOGH,
The Right Honourable Mr. Justice MORRIS,
The Right Honourable Mr. Justice LAWSON,

ON THE

TRIAL OF THE GALWAY COUNTY ELECTION PETITION,

(CASE reserved by Mr. Justice KEOGH),

AT THE FOUR COURTS, DUBLIN.

Thursday, 6th June 1872.

TRENCH - - - - - - - - Petitioner.
NOLAN - - - - - - - - - Respondent.

THE Case reserved by Mr. Justice Keogh was as follows:—

"COMMON PLEAS.

"PARLIAMENTARY ELECTIONS ACT, 1868.

"In the Matter of the Election Petition for the County of *Galway*, between the Honourable *William Le Poer Trench*, Petitioner, and Captain *John Philip Nolan*, Respondent.

"CASE for the determination of the Court of Common Pleas.

"I hereby certify that the above Petition, to which I refer, came on for trial before me at Galway on the 1st April last, and that said trial having been continued from day to day, at the conclusion thereof, on the 27th day of May instant, it appears to me requisite that before finally determining as to that portion of the Petition which prayed that the said Petitioner might be declared duly elected, and that he should have been returned, I should, under the 12th section of the said Act, reserve certain questions of law for the consideration of the Court of Common Pleas, and that I should, accordingly, postpone the granting the certificate directed by the said Act until the determination of such question by the said Court.

"I came to the conclusion, as a matter of fact, that the said Respondent had, previously to the said election, by himself and his agents, committed the offence of undue influence upon the electors in order to induce and compel such electors to give their votes for him, or to refrain from voting against him at said election, contrary to law, and against the provisions of the Statutes against such practices made and provided, and especially against the provisions of the Statute 17th & 18th Victoria, chapter 102, section 5.

"It was proved before me that the number of the electors on the register for such county was 5,346, but that making allowance for double entries and deaths, the real number of electors available to vote at the time of such election, which took place on the 6th of February in this year, did not exceed 4,686. Of those 2,823 voted for the Respondent, and 658 for the Petitioner. The Respondent was declared by the sheriff duly elected.

"It

"It was further proved before me that such undue influence had been practised upon the electors of the county, and had been carried out in pursuance of arrangements made by the said Respondent and his agents previous to such election; and especially during the months of November and December of the last year, and the month of January of the present year.

"It was also proved that certain of the prelates of the Roman Catholic Church had, by letters written to and read at public meetings, and by resolutions adopted at meetings and conferences of the Roman Catholic clergy at which they presided, and which resolutions were printed, published, and made known throughout the county by the Respondent and his agents, aided and assisted in the exercise of such undue influence.

"It was also proved that many of the Roman Catholic clergy discharging ecclesiastical duties in such county had, by their speeches at public meetings held in various parts of the county, commencing on the 19th of December last year, and continued throughout the month of January in the present year, and by denunciations and threats of temporal injury and spiritual punishment uttered during and after Divine service, and in the presence of their congregations, intimidated and unduly influenced the electors of such county, and that the said Respondent had made himself liable for their acts.

"It was also admitted upon both sides on such trial, that at least nine-tenths of the electors were members of the Roman Catholic Church.

"I was satisfied that by the foregoing and other acts of intimidation proved against the Respondent and his agents, the *status* of the said Respondent as a candidate qualified to be elected was destroyed, and that he was disqualified to be elected for the said county by such acts committed by him and his agents as hereinbefore described; and that such disqualification existed previous to the day of nomination for such election; and that the knowledge of such acts, and especially of such intimidation and undue influence, had become generally known through and amongst the great body of the electors throughout the county, and especially amongst those who afterwards voted for the said respondent.

"It was further proved before me that large numbers of the electors who had previously declared their intention to vote for said Petitioner, had been compelled to vote for said Respondent, or to refrain from voting for the said Petitioner, and had avowed they were so compelled by such intimidation and undue influence.

"It was proved that the exercise of such intimidation and undue influence had become publicly known amongst the electors of such county previous to the day of nomination.

"It was further proved before me that on the 3rd day of February, being the day of nomination, the said Petitioner caused a notice to be posted at and in the immediate vicinity of the place of nomination for the said county, and to be advertised in several of the newspapers published in the county, and to be extensively posted in the different polling places for such county, cautioning the electors that said Respondent was disqualified from being elected for the said county, as set forth in said Petition.

"It was further proved that at each of the different polling places, and of the respective polling booths, the said Petitioner had persons stationed with copies of such notice, with the view of serving them on the electors previous to their recording their votes at the poll.

"It was further proved that these notices were served at each of the polling places (with one exception) on some of the electors previous to their voting, the number of such services varying considerably in different polling places, but not amounting in the aggregate of personal services to more than a few hundreds; and furthermore, it was proved that attempts were made to serve numbers of such notices on the voters as they came to the poll, who either refused to receive them, or were prevented receiving them by the confusion in the booths, sometimes by the agents of the Respondent, and frequently by the members of the Roman Catholic clergy who were engaged conducting the electors to the poll. In the excepted booth, to which I have referred, the person placed to serve the notices did not do so until after the electors had polled, having been told by one of the agents of the Petitioner that was the proper time to do so.

"It was further proved that numbers of those notices were scattered about on the floors and tables of the polling booths. They were all in the English language, and it was proved that many of the electors could not speak English.

"It was on the foregoing facts contended before me on behalf of the Petitioner that the *status* of the said Respondent being destroyed thereby, the Petitioner was the only candidate before the constituency eligible to receive their votes, and he declared elected; and that I should accordingly declare him duly elected.

"It was, however, contended on the part of the Respondent, that notwithstanding the said Respondent being found ineligible, yet that the votes given to him were not thrown away, as the electors were not bound to act upon his ineligibility, even though made known to them by sufficient notice, until so declared by some competent legal tribunal; and furthermore that, even if they were bound to act upon such ineligibility, though not so previously found, knowledge thereof was not sufficiently brought home to a sufficient number of electors to displace the majority of the said Respondent, and to justify me in declaring the said Petitioner duly elected.

"I therefore request the opinion and determination of the Court of Common Pleas upon the following questions:—

"First. Were the electors who constituted the majority of said Respondent, fixed with sufficient knowledge of the disqualification of the said Respondent, and should they have acted upon such disqualification, and refrained from voting for said Respondent?

"Secondly. Was the petitioner, there being no disqualification on his part, entitled to be declared elected for said county?

(signed) "*Wm. Keogh.*

"31 May 1872."

Mr. Serjeant *Armstrong*, on behalf of the Petitioner, was heard to address the Court on the case reserved.

Mr. *Macdonogh*, on behalf of the Respondent, was partly heard to address the Court.

[Adjourned to To-morrow, at Eleven o'clock.

Friday, 7th June 1872.

Mr. *Macdonogh* was further heard on behalf of the Respondent.

Mr. *MacDermot* was also heard on behalf of the Respondent.

Mr. *Murphy* was heard on behalf of the Petitioner in reply.

The *Lord Chief Justice* stated that the Court would reserve judgment.

[Adjourned to Tuesday next, at Eleven o'clock.

Tuesday, 11th June 1872.

JUDGMENT.

Mr. Justice Lawson.

Mr. Justice *Lawson.*] In this case two questions have been submitted by Mr. Justice Keogh to this Court for its determination, arising out of the Galway Election Petition, in pursuance of the 12th section of the 31st & 32nd Vict. c. 125, which provides, "That if it shall appear to the judge on the trial of the Petition that any question or questions of law as to the admissibility of evidence or otherwise, require further consideration by the Court of Common Pleas, it shall be lawful for the judge to postpone the granting of the certificate until the determination of such question or questions by the Court, and for this purpose to reserve any such question or questions in like manner as questions are usually reserved by a judge on a trial at Nisi Prius."

The questions so reserved for our consideration are:—First, "Were the electors who constituted the majority of the Respondent fixed with sufficient knowledge of the disqualification of the Respondent, and should they have acted upon such disqualification and refrained from voting for said Respondent? Second. Was the Petitioner, there being no disqualification on his part, entitled to be declared elected for said county?"

It was contended by Mr. Macdonogh in his argument, that the first of these questions was one of fact and not of law, and that therefore the Court could return no answer to it. It is however very clear to my mind that it involves a very serious and important question of law, viz., whether the facts as found in this case are sufficient in point of law to affect the electors with sufficient knowledge of the disqualification of Captain Nolan; and whether votes given after such knowledge are thrown away. Mr. MacDermot, arguing on the same side, admitted that a difficult question of law was raised by the case; his logical intellect could not do otherwise, and he addressed to the Court upon that point an argument marked by singular ability and acumen.

Now the propositions contended for before us on behalf of Captain Trench were: First. That Captain Nolan was disqualified from being elected for the county, and that this disqualification was complete before the election took place. Second. That before a single vote was recorded at the election, sufficient knowledge of that disqualification was brought home

home to the electors who constituted the majority of the Respondent. Third. That Captain Trench, a duly qualified candidate, was entitled to be seated.

Before I approach the special facts of this case, it is absolutely necessary to consider what is the rule of law applicable to cases of this kind. We are directed by the 26th section of the Act under which we sit to observe, as far as may be, the principles, practice, and rules on which Committees of the House of Commons have heretofore acted in dealing with Election Petitions. So far as those principles fail to guide us, we are, according to the 2nd section, to have the same powers as we should have if the Petition were an ordinary cause within our jurisdiction, and we must then be governed by the principles of the Common Law. I have therefore approached the consideration of this case just as if it were a new trial, motion, or case, reserved by a Judge from Nisi Prius, endeavouring to ascertain, in a matter to us somewhat novel, what are the principles of law which govern the case, and to apply them to the facts.

First, then, it is necessary to see whether there are any principles to be deduced from the decisions of Committees of the House of Commons upon the question: Whether a duly qualified candidate is entitled, though in a minority, to be seated in case the other candidates are found to have been disqualified at the time of the election, and the electors were duly apprised of such disqualification?

The research and industry of counsel has referred us to all the cases from the earliest times before Committees of the House of Commons upon this point. I need not travel through them. The result is, that in very many cases the candidate in the minority has been seated upon proof of the disqualification of his opponent having been within the knowledge of the electors. In other cases, upon apparently a similar state of facts, the Committees have simply unseated the disqualified candidate, and declared the election void. Two remarkable instances of apparently contradictory decisions are to be found in the Cheltenham and Horsham cases, which were decided about the same time. In the Horsham case the Committee seated the candidate who was in the minority, and in the Cheltenham case they declined to seat him. In both cases there was a divided opinion amongst the members of the Committee. The result therefore appears to be, that this jurisdiction was undoubtedly possessed by Committees of the House of Commons, and was very very frequently exercised by them, while in many other instances they refused to exercise it.

Failing, then, to discover in this chaos of decisions any settled principles which should absolutely govern us, we must have recourse to our Common Law for rules and analogies to guide our judgment; a source to which, for my own part, I must say I turn with pleasure, because we shall find in it (though often mixed up and obscured by what may be deemed technical or narrow) principles of the soundest sense and the truest wisdom; and above all, a power of expansiveness and adaptation which, when properly applied, is adequate to the solution of the novel questions which in the complex relations growing out of our advancing civilisation are constantly coming to the surface. This expansive power is well stated in the passage of Mr. Justice Coleridge's judgment in Gosling *v.* Veley, in 4 House of Lords Cases, 768, to which Mr. Murphy referred us, and in the language of Lord Chief Justice Eyre, in the case of Ilderton *v.* Ilderton, 2 H. Bl. 156, where he says that when one mode of trial is obsolete or inapplicable, the Common Law "out of its own inexhaustible fountain of justice" will derive another.

The first authority, then, to which I shall refer is the King *v.* Hawkins, 10 East, 211. That is a case of the highest authority. The judgment of the Court of Queen's Bench is delivered by Lord Ellenborough, and was carried to the House of Lords and there affirmed, the case being reported in 2 Dow's Parliamentary Cases, 124. The question there discussed was, whether the notice of the incapacity of the other candidate was too late, not having been given until after two persons had voted. At page 217 of the report Lord Ellenborough says, "The general proposition that votes given for a candidate after notice of his being ineligible, are to be considered the same as if the persons had not voted at all, is supported by the cases of the Queen *v.* Boscawen, Easter, 13 Anne; the King *v.* Withers, Easter, 8 Geo. 2; Taylor *v.* Mayor of Bath, M., 15 Geo. 2; all which are cited in Cowper, 537, in the King *v.* Munday. In the first, Boscawen and Roberts, the two candidates, had an equal number of votes; but because Boscawen was incapable, the votes given for him were considered as thrown away, and the other duly elected. In the second case, Withers had five votes out of 11, and the other six refusing to vote at all, the Court held Withers duly elected; and that the six who refused to vote were virtually consenting to the election of Withers. In the third case, Taylor, Bigg, and Kingston were candidates. Bigg was objected to as a disqualified person; notwithstanding which, Bigg had 14 votes, Taylor 13, and Kingston only one. There Lord Chief Justice Lee, at Nisi Prius, directed the jury that if they were satisfied that the electors had notice of Bigg's want of qualification, they should find for the plaintiff—that was Taylor, who had only 13 votes—because Bigg, not being qualified, was to be considered as a person not *in esse*, and the voting for him a mere nullity; and in the King *v.* Munday, in Cowper, and the King *v.* Coe, in the 27th of the present King, Hilary Term, this doctrine was not denied; although the cases then before the Court went off on other points." That is the judgment of Lord Ellenborough; and Lord Eldon, in giving the judgment of the House of Lords, where he affirms what was done below, puts it upon the ground that the "majority knowingly voted for this dead man." It is quite true that, as was well observed in the argument, the candidate in that case admitted his own incapacity, but it will be found in later

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later cases that this is not material; and that if the elector votes after he knows of the disqualification, he does so at the peril of losing his vote. The rule is again recognised in the case of the King *v.* Parry, 14 East, 549. In the case of Gosling *v.* Veley, 7 Queen's Bench Reports, 406, Lord Denman, a great constitutional lawyer, lays down the rule as expressly applicable to elections to the House of Commons. At page 436 he says, "Upon the argument of this case the counsel for the defendants did not shrink from meeting his opponent on this principle. Majority, he truly asserted to be legal majority, and he contended that though there might be numerically more vestrymen present who were, in intention, adverse to the rate, than those who voted for it, yet the majority of votes legally expressed was in its favour. This position he sought to establish by showing that the vestrymen who were so adverse had thrown away their votes; and he likened this case to those which have been decided in regard to corporate assemblies for corporate elections, *or the meeting of freeholders or burgesses in elections to the House of Commons.* It may be convenient, in the first place, to examine into the principle on which this rule as to corporate and other elections appears to have been established; and then, after stating the facts which these pleadings disclose with regard to the proceedings now in question, to see whether it is properly applicable to those facts, so as to be the groundwork of our decision. First: the cases in which the rule has been either stated or applied, in regard to corporate elections, are very numerous. It may be sufficient to refer to four of the most important, either for the arguments or the judgments: Oldknow *v.* Wainwright, Rex *v.* Munday, Rex *v.* Hawkins, and Rex *v.* Parry. The result of the decisions appears to be this: where an elector, before voting, receives due notice that a particular candidate is disqualified, and yet will do nothing but tender his vote for him, he must be taken voluntarily to abstain from exercising his franchise; and therefore, however strongly he may in fact dissent, and in however strong terms he may disclose his dissent, he must be taken in law to assent to the election of the opposing and qualified candidate; for he will not take the only course by which it can be resisted—that is, the helping to the election of some other person. He is present as an elector; his presence counts as such to make up the requisite number of electors where a certain number is necessary; but he attends only as an elector to perform the duty which is cast on him by the franchise he enjoys as elector; he can only speak in a particular language; he can do only certain acts; any other language means nothing; any other act is merely null; his duty is to assist in making an election. If he dissents from the choice of A., who is qualified, he must say so by voting for some other also qualified; he has no right to employ his franchise merely in preventing an election, and so defeating the object for which he is empowered and bound to attend. And this is a wise and just rule in the law. It is necessary that an election should be duly made, and at the lawful time; the electoral meeting is held for that purpose only; and but for this rule the interest of the public, and the purposes of the meeting, might both be defeated by the perverseness or the corruption of electors who may seek some unfair advantage by postponement. If, then, the elector will not oppose the election of A. in the only legal way, he throws away his vote by directing it where it has no legal force, and in so doing he voluntarily leaves unopposed, *i.e.*, assents to the voices of the other electors. Where the disqualification depends upon a fact which may be unknown to the elector, he is entitled to notice, for without that the inference of assent could not be fairly drawn, nor would the consequence as to the vote be just. But if the disqualification be of a sort whereof notice is to be presumed, none need expressly be given; no one can doubt that if an elector would nominate and vote only for a woman to fill the office of mayor or burgess in Parliament, his vote would be thrown away; there the fact would be notorious, and every man would be presumed to know the law upon that fact." This decision was reversed in the House of Lords on a collateral point, but the principles laid down by Lord Denman have never since been questioned, and must be regarded as law.

The last proposition of Lord Denman's in the part of his judgment which I have read, that a person having notice of the fact is presumed to know the law, has been qualified by a recent decision of the Court of Queen's Bench in England, which has been much relied on in argument on both sides, the Queen *v.* Mayor of Tewkesbury, L. R., 3 Q. B. 635, which rules that notice of the facts creating the disqualification is not necessarily notice of the disqualification itself. The general rule, however, in the same terms as I have already indicated, is thus laid down by Mr. Justice Blackburn in that case. He says, "The candidate for the office of town councillor is duly elected if he has an actual majority of valid votes. This was decided in Rex *v.* Hawkins; and it was also decided that, if an elector, having notice of the disqualification of a candidate, chooses to vote for that candidate, it is the same thing as if he did not vote at all. From the illustrations in the cases, it is plain that if an elector knows as a fact that the candidate for whom he is about to vote is disqualified, and yet persists in voting for him, the elector's vote is as utterly thrown away as if he had voted for a dead person, or for the man in the moon."

In the case of the Queen *v.* Coaks, 3 E. & B. 253, Lord Campbell says, "Now, it is the law, both *the Common Law and the Parliamentary Law, and it seems to me also common sense*, that if an elector will vote for a man whom he knows is ineligible, it is as if he did not vote at all, or voted for a non-existent person, as it has been said, as if he gave his vote for the man in the moon." Here we have another great master of the Common Law laying down this rule as clear and manifest.

Such being the undoubted rule of the Common Law, applicable to Parliamentary as well

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well as other elections, let us see what are the special facts stated in this case (out of which I shall not travel), in order to ascertain whether the rule is applicable to them, so as to form the groundwork of our decision.

First, then, was there a disqualification of Captain Nolan before this election took place? It appears by the case that he was personally guilty of acts of intimidation and undue influence before the election; that he had entered into a combination to procure his own return by undue influence long before the election took place. Now, I read from the case the finding upon that matter. The learned Judge says, "I came to the conclusion, as a matter of fact, that the said Respondent had, previously to the said election, by *himself* and his agents, committed the offence of undue influence upon the electors, in order to induce and compel such electors to give their votes for him, or to refrain from voting against him at said election, contrary to law and against the provisions of the Statute against such practices made and provided, and especially against the provisions of the Statute 17th & 18th Victoria, chapter 102, section 5." He then gives the number of those who voted for both candidates, and he says, "It was further proved before me that such undue influence had been practised upon the electors of the county, and had been carried out in pursuance of arrangements made by the said Respondent and his agents previous to such election, and especially during the months of November and December of the last year, and the month of January of the present year. It was also proved that certain of the prelates of the Roman Catholic Church had, by letters written to and read at public meetings, and by resolutions adopted at meetings and conferences of the Roman Catholic clergy, at which they presided, and which resolutions were printed, published, and made known throughout the county by the Respondent and his agents, aided and assisted in the exercise of such undue influence. It was also proved that many of the Roman Catholic clergy discharging ecclesiastical duties in such county had, by their speeches at public meetings held in various parts of the county, commencing on the 19th of December last year, and continued throughout the month of January in the present year, and by denunciations and threats of temporal injury and spiritual punishment, uttered during and after Divine service, and in the presence of their congregations, intimidated and unduly influenced the electors of such county; and that the said Respondent had made himself liable for their acts. It was also admitted upon both sides on such trial that at least nine-tenths of the electors were members of the Roman Catholic Church. I was satisfied that, by the foregoing and other acts of intimidation proved against the Respondent and his agents, the *status* of the said Respondent as a candidate qualified to be elected was destroyed, and that he was disqualified to be elected for the said county by such acts committed by him and his agents as hereinbefore described: and that such disqualification existed previous to the day of nomination for such election."

Those are the findings with respect to this disqualification. The question then is, did this amount in law to a disqualification? Mr. MacDermot argued with very great ingenuity that such acts did not amount to a disqualification, unless they were adjudicated upon by a committee on the report of a judge. His argument was to this effect: there was no such disqualification at the Common Law. The several earlier Statutes, before the passing of the Corrupt Practices Act, created such disqualification upon the commission of any one of those offences; but the Corrupt Practices Act, 17th & 18th Victoria, chapter 102, repealed all those earlier Acts, and created no disqualification except that contained in the 36th section. Now, the 36th section is in these terms, "If any candidate at an election for any county, city, or borough shall be declared by any Election Committee guilty, by himself or his agents, of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected or sitting in Parliament for such city, county, or borough during the Parliament then in existence." This construction of the Act, which is contended for, would lead to some very startling consequences. If the earlier sections, 2, 4, and 5, defining the offences of bribery, treating, and undue influence, and making them misdemeanours, do not disqualify the candidate who is guilty of them from being elected, and do not destroy his *status*, upon what ground is a judge to unseat him? He cannot unseat a man because he has committed a misdemeanour, and it would seem, therefore, to follow in strictness from this argument that the judge could not unseat him unless he had already been found guilty. This, however, is an absurd consequence, and I think that the true construction of the Statute is that the commission of any of these offences, *ipso facto*, disqualifies the candidate from being elected, or, to use the language of Mr. Baron Martin, in the Norwich case, "annihilates his *status* as a candidate." The 36th section then imposes an additional disqualification, by rendering the candidate who has been once reported incapable of being elected or sitting for that place during the then Parliament, and in such a case the mere production of the report is sufficient, without going into the facts, to disqualify him. This was obviously introduced in order to prevent what might otherwise happen, that if a candidate were unseated, and a new election were ordered, he might again present himself for the same place. Therefore, if the 36th section were not in the Act at all, I should hold that the commission of any of the offences specified, disqualified the candidate from the moment the act was committed. I do not think that the 36th section, which imposes this additional disability, can be held by implication (as was argued) to alter the rule of law to which I have referred, and to enact that no previous disqualification of a candidate, unless evidenced by a report of a judge, shall have the effect, no matter how clear it may be, of destroying his *status*, so as to make votes given to him, after notice to the electors, thrown away. The Legislature has not

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said so, and the result of so holding would be that a candidate might appear on the day of nomination publicly with a bag of sovereigns, and in the presence of all the electors promise a sovereign to every man who voted for him; and still, according to this argument, he could be merely unseated, and the seat could not he given to the qualified candidate next to him on the poll, although every one of the electors had personal notice of the disqualification. Nor does it stop here, for it is manifest that according to this doctrine, the process might be repeated from time to time, and a series of disqualified candidates might be brought forward one after another; and no matter how open, notorious, and manifest were the corrupt practices which they used, they could only be unseated and the election declared void; and the candidates seeking the seat by fair means, and the free electors, would be placed in a position in which, in my opinion, the law never contemplated that they should be placed.

I think, therefore, that in this case the disqualification of Captain Nolan before the day of election was complete.

The second question, and the important one is: Was such knowledge of that disqualification brought home to the electors as to let in the application of the rule of law to which I have referred? Upon that point we must turn again to the case for the finding upon the subject. The learned Judge finds, after finding that such disqualification existed previous to the day of the nomination for such election, "that the knowledge of such acts, and especially of such intimidation and undue influence, had become generally known through and amongst the great body of the electors throughout the county, and especially amongst those who afterwards voted for the respondent." He says again, "It was further proved that the exercise of such intimidation and undue influence had become publicly known amongst the electors of such county previous to the day of nomination."

It appears then, from these findings, that the electors knew, and must have known, from the very nature of the case, that this undue influence was practised before the election by the Respondent. This is a case very special indeed in its circumstances. The candidate enters into a combination beforehand—not a secret one, but public, open, and avowed—to obtain his return by bringing undue influence to bear upon the body of the electors. That was carried out publicly for months before the election; its success depended upon its universality, upon its being brought to bear upon and control the wishes of all the electors. I cannot, therefore, doubt upon this finding that every elector must be held to have known, as a matter of fact, that Captain Nolan had been guilty of practising intimidation and undue influence upon the electors.

Therefore, upon this part of the case, the only question, as it appears to me, is whether, knowing all these facts, the electors must be taken also to have known the legal consequence, that the commission of these offences created a disqualification to be a candidate, or to be elected as a Member of Parliament.

Now, in order to arrive at a sound conclusion upon this point, it is absolutely necessary to consider what is the character of the acts done by Captain Nolan and his agents, which the electors knew of. I say then, emphatically, they were criminal acts. I am not at liberty, sitting here as a judge, to gloss over those acts, and to say that they were the results of indiscreet zeal or mere breaches of decorum. I feel myself bound, even at the peril of giving offence, to designate them by their true name, crimes; and those engaged in them, whether lay or clerical, criminals engaged in an unlawful combination. In the case of the Queen *v.* Conway, 7 Irish Common Law Reports, page 519, which was a prosecution against the Rev. Peter Conway for offences like the present at the Mayo election, Mr. Justice Perrin, a judge whose authority upon a point like this, I presume, is not to be questioned, says, "One of the charges is for using what is called spiritual intimidation, and calling down and using imprecations of a very shocking nature to prevent persons from the due exercise of the elective franchise. The charges laid in the information are grave and serious offences, offences *which require suppression, and, if necessary, punishment.*" When it appears then, that this system of intimidation was carried on throughout the county, publicly and openly, by the candidate himself, seen and known by the electors—when denunciations were ringing from the altars—am I, sitting here as a judge, at liberty to presume that the electors who saw these offences committed did not know that they were offences, and that their commission created a disqualification? I cannot lay down any such principle. I hold that every man must be presumed to know the criminal law; and to be aware when he sees or knows of an offence having been committed, that it is an offence; that it entails penal consequences upon the offender. I do not think that the case of the Mayor of Tewkesbury at all applies to a case like the present. There the disqualification was that the candidate was himself mayor and returning officer, and, as such, was disqualified, according to the decision in the Court of Queen's Bench in the case of the Queen *v.* Owens. In the case of the Mayor of Tewkesbury, Mr. Justice Blackburn says: "It is, therefore, necessary to decide whether the mere knowledge of the fact that Blizard was the mayor and the returning officer must be taken to involve knowledge of his being disqualified for election. Every elector in the borough must have known that Blizard was the mayor, and every one who saw him presiding at the election must have known, as a fact, that he was the returning officer, and every elector who was a lawyer, and who had read the case of Regina *v.* Owens, would know that he was disqualified. From the knowledge of the fact that Blizard was the mayor and returning officer, was every elector bound

bound to know, as a matter of law, that he was disqualified? I think," he says, "that when a voter is informed that a certain circumstance, in point of law, disqualifies a candidate, even although he may hold a different opinion, yet if he afterwards votes for that candidate, his vote is thrown away." This has a very important bearing upon that part of the argument which I have already disposed of, that an elector is not bound to take notice of disqualification unless it has been the subject of adjudication. He goes on: "In the present election a voter may possibly have been told by one party that Blizard, being returning officer, could not be elected; by the other party that he could be. If this could be shown, the vote would have been thrown away; but the case merely shows, as a fact, that Blizard was returning officer, from which a lawyer would be aware that he was disqualified, and, in my opinion, the knowledge that Blizard was returning officer does not, in law, necessarily involve the knowledge that he was disqualified." Mr. Justice Lawson.

Now, that is the *ratio decidendi* in that case, and does that reasoning apply to the present case? Can any elector be assumed to be ignorant that a candidate openly practising intimidation and undue influence, was not, by law, on the commission of those acts, disqualified from being elected? I think not. It is quite true that a man cannot be assumed to know legal technicalities, or, as Mr. Justice Maule says, in the case of Martindale *v.* Falkner, cited by Mr. Justice Blackburn in the Mayor of Tewkesbury's case, "It would be too much to hold that ordinary people are bound to know in what particular court such and such a practice does or does not prevail." Lord Westbury, in the case of Cooper *v.* Phibbs, in the Law Reports, 2nd House of Lords, 170, thus explains the maxim: "It is said," he says, "*ignorantia juris haud excusat;*" but in that maxim the word "*jus*" is used in the sense denoting general law, the ordinary law of the country. Mr Justice Lush, in his judgment in the Mayor of Tewkesbury's case, page 638, says, "For the reasons given by my Brother Blackburn, I am of opinion that it is not enough to show that the voter knew the fact only, but that it is necessary to show sufficient to raise a reasonable inference that he knew the fact amounted to a disqualification. It cannot be said, *in all cases*, that the mere knowledge of a fact which, in law, disqualifies a candidate, must be taken to be knowledge of all the accompanying circumstances."

Taking the rule to be as thus laid down, I am clearly of opinion that it is not only a reasonable inference, in the language of Mr. Justice Lush, but a legal inference from the facts stated, which, as a Judge, I am bound to draw, that the electors who knew of the exercise of these acts of undue influence and spiritual intimidation knew that they disqualified the candidate and destroyed his status.

But the case does not rest merely upon the general notoriety and publicity of this intimidation. It was proved that, on the day of nomination, two days before the day of polling, a notice was posted at, and in the immediate vicinity of, the place of nomination, and that that notice was signed by a responsible person, the conducting agent for Captain Trench. It was very accurately and carefully prepared, and it distinctly informed the electors that Captain Nolan was incapacitated and disqualified by acts of treating, intimidation, and undue influence, and that votes given for him would be thrown away. This notice was also published in the local newspapers, and extensively posted at the different polling places in the county. The case further states, that the Petitioner had persons stationed at each of the polling places and booths, in order to serve the electors previous to their coming to the poll. It states, "that these notices were served at each of the polling places (with one exception) on some of the electors previous to their voting, the number of such services varying considerably in different polling places, but not amounting, in the aggregate of personal services, to more than a few hundreds, and that attempts were made to serve numbers of such notices on the voters as they came to the poll, who either refused to receive them, or were prevented receiving them by the confusion in the booths; sometimes by the agents of the Respondent, and frequently by the members of the Roman Catholic clergy, who were engaged in conducting the electors to the poll. In the excepted booth to which I have referred the person placed to serve the notices did not do so until after the electors had polled, having been told by one of the agents of the Petitioner that was the proper time to do so. It was further proved that numbers of those notices were scattered about on the floors and tables of the polling booths. They were all in the English language, and it was proved that many of the electors could not speak English." It is clear, upon those facts, that this notice was not personally served upon all the electors, or upon the majority of them; but I think that the Petitioner did all that could be reasonably done to apprise the electors of the disqualification by posting, publishing, and serving those notices. The question to be determined is knowledge. Notice is only one mode of bringing home knowledge; and taking the facts as stated regarding these notices in conjunction with the fact of previous knowledge on the part of the electors stated in the case, I cannot avoid drawing the conclusion that sufficient knowledge of the disqualification of Captain Nolan is brought home to the electors who constituted the majority of the Respondent.

It is said that no case has arisen since the Corrupt Practices Act in which a candidate in a minority has been seated. The point does not appear to have arisen. It could not arise, unless the disqualification existed before the election, and was brought home to the knowledge of the electors. In the case of the Norwich Election Petition, before Mr. Baron Martin, the bribery relied on to disqualify the candidate did not take place until three o'clock on the day of the polling, and the candidate was not personally implicated in it;

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it; and therefore the question could not have arisen. The case, however, now arises, and calls for a decision. I decide it upon its own special facts, which I hope are of rare occurrence. I find existing, as reported in this case, a system of spiritual intimidation organised by the candidate, and successfully carried out through the country for months before the election. It is found that "large numbers of the electors who had previously declared their intention to vote for the Petitioner, had been compelled to vote for the Respondent, or to refrain from voting for the Petitioner, and had avowed that they were compelled to do so by such intimidation and undue influence." How jealously the law regards the exercise of spiritual influence in the various transactions of life every lawyer knows. Just in proportion as it is powerful and all pervading, so are the safeguards which the law interposes for the protection of those on whom it is exercised. Not only does the law of our country condemn its exercise, but it is contrary to the moral law, and the best instincts of our nature revolt against it. It is an application to unworthy purposes of an influence given for a pure and holy purpose. If it is forbidden when exercised in the private affairs of men, what judgment should the law pronounce when a minister of religion, standing upon the altar, robed in the sacred vestments of his order, surrounded by the most solemn mysteries of his faith, claiming the power to bind and to loose, makes use of that position to denounce and to hold up to public odium those who dare to exercise their civil rights and franchises in a way that he disapproves of, and to threaten them with temporal injury and spiritual punishment? When such words fall from lips which should only utter the message of love and mercy to sinners, the words of the great Catholic Epistle of St. James rise to my mind, "Doth a fountain send forth at the same place sweet water and bitter? Out of the same mouth proceedeth blessing and cursing. These things ought not so to be."

We have been told, in the argument of this case, of the constitutional rights of electors. They are entitled to be protected, so far as we can do so by our decisions, against undue influence. The qualified candidate, against whom such influences have been used, has also a right to be protected against them, so far as the rules of law will admit. I believe that the conclusion at which I have arrived in this case, after careful consideration, is in strict conformity with the rules of the Common Law, in harmony with the principles of our free constitution, and calculated to promote that which is stated in the preamble of the Act which we are here administering to be expedient, namely, "the securing of the freedom of election;" for a candidate may hesitate henceforth to invoke to his aid spiritual influence and altar denunciations, if it be decided by this Court that the effect of introducing such tremendous weapons into a contest will be, not only to cause the ultimate defeat of the person who resorts to them, but also to render probable the success of the candidate against whom they have been employed.

For these reasons I am of opinion that both of the questions which have been submitted to us should be answered in the affirmative.

Mr. Justice Morris.

Mr. Justice *Morris.*] In this case the judgment pronounced by my Brother Lawson upon the points reserved for the determination of this Court obviously leaves nothing to me either to add or to alter; and I have only to express my concurrence with it.

Lord Chief Justice Monahan.

Lord Chief Justice *Monahan.*] In this case I have the misfortune of differing from my two learned Brothers who have preceded me, and also, I believe, from my Brother Keogh, who is to follow. In my opinion, the answers to the questions which have been asked ought to be different. I do not think that Captain Trench should be declared the sitting Member. The case is one of very considerable difficulty and novelty, and therefore requires careful consideration. The facts, so far as they appear to me material, are these. The number of the electors competent to vote at the election is found to have been 4,686. It appears that of these 4,686, 2,823 voted for Captain Nolan, and 658 for Captain Trench, leaving Captain Nolan a majority of 2,165, and leaving 1,205 unpolled. It is stated that during the months of November, December, and January, Captain Nolan, by himself, his agents, and others, for whose acts he had rendered himself responsible, was guilty of what the law has defined to be undue influence, and therefore the decision, unseating him, is correct. It is stated in the case, that certain prelates and other members of the Roman Catholic priesthood had entered into a combination or arrangement with Captain Nolan, and that, during the months of November, December, and January preceding the election, these parties had been guilty of acts of undue influence, for which Captain Nolan was responsible. It is stated that the knowledge of such acts, and especially of such intimidation and undue influence, had become generally known through and amongst the great body of the electors throughout the country, and especially amongst those who afterwards voted for the said Respondent.

The case states that large numbers of the electors, who had previously declared their intention to vote for the Petitioner, had been compelled to vote for the Respondent, or to refrain from voting for the Petitioner, and avowed they were so compelled by such intimidation and undue influence. And further, that the exercise of such intimidation and undue influence had become publicly known amongst the electors of such county previous to the day of nomination. It is not stated, in fact, to what number of the electors

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electors these act shad become known. The number of electors who did not vote for Captain Trench were those who voted for Captain Nolan, and those who refrained from voting; and it is not stated what proportion, or how many, of these electors became aware of these facts, the knowledge of which is said to have caused their votes to be thrown away. It is also stated, that on the 3rd day of February, being the day of nomination, the Petitioner caused a notice, signed by his agent, to be posted at and in the immediate vicinity of the place of nomination, and to be advertised in several of the newspapers published in the county, and to he extensively posted in the different polling places, apprising the electors that the said Respondent was disqualified from being elected. And further, that at each of the different polling places, and of the respective polling booths, the said Petitioner had persons stationed with copies of such notice, with the view of serving them on the electors previous to their recording their votes at the poll. And that these notices were served at each of the polling places (with one exception) on some of the electors previous to their voting, the numbers of such services varying considerably in different polling places, but not amounting in the aggregate to more than a few hundreds. In that excepted case there was no service, as the person placed to serve the notices did not do so until after the electors had polled, having been told by one of the agents of the Petitioner that it was the proper time to do so.

It is also stated in the case that attempts were made to serve numbers of such notices on the voters as they came to the poll, who either refused to receive them, or were prevented receiving them by the confusion in the booths, caused sometimes hy the agents of the Respondent, and frequently hy the members of the Roman Catholic clergy, who were employed conducting the electors to the poll. The learned Judge states that it was on the foregoing facts, contended before him on behalf of the Petitioner, that the status of the said Respondent being destroyed, hereby the Petitioner was the only candidate before the constituency eligible to receive their votes, and to he declared elected, and that he should accordingly declare him duly elected. It was, however, contended on the part of the Respondent, that notwithstanding the said Respondent being found incligible, yet, that the votes given to him were not thrown away, as the electors were not bound to act upon his ineligibility, even though made known to them by sufficient notice, until so declared by some competent legal tribunal; and furthermore, that even if they were bound to act upon such incligibility, though not so previously found, knowledge thereof was not sufficiently brought home to a sufficient number of the electors to displace the majority of the said Respondent, and to justify him in declaring said Petitioner duly elected. He therefore requests the opinion and determination of the Court of Common Pleas upon the following questions:

> First. Were the electors who constituted the majority of said Respondent fixed with sufficient knowledge of the disqualification of the said Respondent, and should they have acted upon such disqualification, and refrained from voting for him?
>
> Second. Was the Petitioner, then, having no disqualification on his part, entitled to be declared elected for said county?

I confess I entertain some douht whether the first question is a question of law, which, under the Act, should have heen suhmitted to this Court. It appears more a matter of fact as to what inference of fact should be drawn from the facts stated. I very much douht the true construction of the Act to he that we should be required to draw inferences of fact. But whether this he so or not, we should, in my opinion, answer the questions as best we can.

The first matter to he considered is, are we satisfied that the 2,165 voters who constituted the majority of Captain Nolan had notice, or were aware of the acts of intimidation and undue influence committed hy him and his agents. Considering the extent of the county, and that a considerahle number of the electors were small country farmers, who in all probability remained at their homes till the polling-day, I cannot, from the etatement that these acts were generally known in the county, come to the conclusion that they were known to upwards of 2,000 of the constituency who voted for Captain Nolan. If, as in some of the most recent cases on the subject before Committees of the House of Commons, a scrutiny was to be taken, it cannot possihly be contended that there is sufficient evidence to justify any particular voter being struck off the poll. But supposing for a moment that there was such evidence as would justify a jury in coming to the conclusion that the acts and conduct of Captain Nolan and his agents were known to a sufficient number of the electors, what materials are there for coming to the conclusion that the 2,165 electors who constituted the majority of Captain Nolan were aware of the illegality of those acts, and that thereby Captain Nolan was disqualified, and that the votes given for him would be thrown away? Now, considering that a great number of those voters were small country farmers, unable to read or write, and speaking only the Irish language, and knowing as I do the confidence placed by persons of that class in the Roman Catholic priests, and the high opinion entertained of them by these country people, I cannot come to the conclusion in my own mind that they were aware that the acts committed hy the Roman Catholic priests were in fact illegal. It is frequently a matter of some nicety and difficulty to determine where legitimate influence ceases, and undue influence begins. It cannot be douhted that a priest is justified in soliciting,

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requesting, and advising his parishioners to vote for any particular candidate in preference of another; but to suppose that an ignorant county Galway farmer, who can neither read or write, or speak the English language, should be able to distinguish between such legitimate and illegitimate influence, appears to me utterly incomprehensible. But it has been argued that every one is presumed to know the law, and therefore, that these voters who were aware of the acts done by Captain Nolan and his agents, must be presumed also to have known that they were illegal, and that in consequence thereof, Captain Nolan was disqualified from being elected. I do not think that there is any such presumption of law as that stated. I am aware that ignorance of law will not excuse any party who is prosecuted for having violated the provisions of any statute, or having committed any offence; but in my opinion, such presumption does not extend to a third person in no way connected with the offence alleged to have been committed. Let us consider for a moment what on this state of facts is the law which we are to administer. The 26th Section referred to by my Brother Lawson, directs, "Until Rules of Court have been made in pursuance of this Act, and so far as such rules do not extend the principles, practice, and rules on which Committees of the House of Commons have heretofore acted in dealing with Election Petitions, shall be observed, so far as may be, by the Court and Judge in the case of Election Petitions under this Act." The question which we have to consider is this, what was at the time of the passing of this Act the usage and practice adopted by the Committees of the House of Commons in relation to this subject matter? It does so happen that the cases immediately before, or not very long before, the passing of the Act are not very many in number. There are two or three cases reported in Power, Rodwell, and Dew's Election Cases, which are the most recent on the subject; one of them is the Tavistock case, the decision of which is reported in page 13, the case commencing at page 5. In that case there had been three candidates for the borough of Tavistock; one of the three candidates was a Mr. Carter, and he was one of the two who were returned, and the objection against him was, that he had not the necessary property qualification. What occurred at the election was this, notice was publicly given, by posting and placarding, that he had not the necessary qualification. He came forward and made a solemn declaration that he had. Notwithstanding that, and notwithstanding that there was no actual service of the notice, the candidates, at the hearing of the Petition, seem to have entered into some arrangement that they should admit the service of the notice of the want of qualification, as we all know Committees of the House of Commons, if the candidates come to any arrangement among themselves, were not very particular in protecting the interest of the electors who were absent, and accordingly they reported, not only that Mr. Carter had not the necessary qualification, but that his adversary should be declared duly elected. Previous to that there were two cases, one of which was the Cheltenham case, and the other the Horsham case. The Committees were struck on the same day, and the objection to the election was, that the person elected at the subsequent election had been guilty of treating at the previous election. It was proved in the Cheltenham case that he had been guilty of treating. It was proved also that notice had been given to the different electors, but it was argued that it was a monstrous thing that, because one man alleged that the person opposed to him had been guilty of treating, therefore the elector was, at his peril, to decide that disputed point. Accordingly the Committee in the Cheltenham case decided that they would not act upon any such supposition as that, and though they declared the sitting Member to be disqualified, and not to have been properly elected, they ordered a new election. The Horsham case was the very opposite, because there the facts were that at the previous election Mr. Fitzgerald was a candidate. He was in the minority. Mr. Jervis was returned. Mr. Jervis however was unseated for treating, and a new election was directed. At the new election, notice was given to each voter as he came to the poll, that Mr. Fitzgerald had been guilty of treating at the previous election, and was therefore disqualified to be elected at the then present election. The Committee having found that Mr. Fitzgerald had been guilty of treating at the previous election, they not only unseated him but declared that the other candidate was duly elected. It is utterly impossible to reconcile those two cases or to come to the conclusion that there was any fixed or proper rule in Parliament at that time to guide anyone upon questions of that description. It was subsequently to that that the Tavistock case was decided, in which the Committee came to the conclusion that a man who was aware that the qualification of a candidate was objected to at the time of the polling, should, at his peril, judge whether or not the candidate had the qualification. I confess I cannot understand the good sense of that decision, nor does it appear to me to be one that ought to be followed. Subsequent to this decision a very important case was before the House, viz., the Borough of Clitheroe case. In the Clitheroe case, just as in the previous cases, the sitting Member had been guilty of acts of treating at the former election, and the question was, whether, notice having been given to all the voters that he had in fact been guilty of treating, that should not only vitiate the election which they were then considering, but should also have the effect of entitling his opponent to the seat. The Committee unanimously came to the conclusion that he was not entitled to the seat, and the election was declared void. There was a Report made to the House to which I think it may be well to refer. It is the 6th Resolution.

That from the proceedings before the Committee, they think it right to draw the attention of the House to the unsatisfactory state of the law with regard to the effect of notice to electors in the case of a candidate who is returned by a majority of votes. By the

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the Common Law, the principle seems to be firmly established, that where a candidate is in point of fact disqualified at the time of an election, all votes given for him with knowledge of the fact upon which such disqualification is founded, must be considered as thrown away. This knowledge may be established either by distinct notice or by notoriety, and it will in all cases be inferred that where the voter is aware of the facts, he is aware of the legal deduction from those facts, however intricate and doubtful such deduction may be. It is obvious that on these principles it may be contended that in all cases without exception, where notice of disqualification is served on a sufficient number of voters of the majority, and where the fact of such disqualification existing at the time of the election is subsequently established, the candidate who is in a minority on the poll is entitled to the seat. Some cases before Election Committees appear to have been decided on principles which lead inevitably to this conclusion. On the other hand, other cases point to the conclusion that, to give effect to the notice, the disqualification must be founded on some positive and definite fact, existing and established at the time of the polling, so as to lead to the fair inference of wilful perverseness on the part of the electors voting for the disqualified person. The Committee in deciding this question have unanimously adopted the latter view, which they believe to be in accordance with the sound construction of law, as well as with justice and reason. At the same time they cannot but feel that the cases are so contradictory that future Committees may, as previous Committees have done, come to a different conclusion on the same state of facts; and they consider it therefore most desirable that, as regards the election of Members of Parliament, the law should be distinctly defined by some statutory enactment. Of course, any opinion I may form may not be considered of any importance; but I would hope that, as the Act under which we are now sitting will expire at the end of the present Session of Parliament, unless renewed, the Legislature would take into its consideration the Report of the Clitheroe case, and that some Act might be passed to establish some fixed rule to go by in cases of this description. I therefore find it utterly impossible to act upon the decision of Election Committees, because I think, in considering what the law now is, we must consider what the law was at the time of the passing of the Act, as administered by those Committees. The last case, I believe, in which the question arose before a Committee of the House of Commons was the Clitheroe case, to which I have referred. It is certainly not conclusive of the question: but it is a circumstance worthy of consideration, that from the time of that Report in the Clithero case up to the passing of the present Act, there is not a single instance to be found in which a Committee of the House of Commons, upon acts of this description (viz. undue influence, or treating, or any matters of that sort), did more than unseat the sitting Member; and no instance is to be found in which, since this Resolution of that Committee, which I have read, was come to, they seated the unsuccessful candidate. If bound to follow the decision of Committees of the House, I certainly would follow the decision in the Clitheroe case. But if decisions of Committees of the House of Commons afford no rule to be followed, I think I am bound to ascertain, as best I can, what the rule of the Common Law is upon the subject. But just as I conceive that the last cases before Committees are the cases to be followed to ascertain the Election Petition law, so I conceive that from day to day changes are made in the Common Law of the country by decisions of competent Courts; and I confess that if I am to adopt the principles of Common Law, I am not able, by any attainments that I may happen to have, on principle, to distinguish the present case from the case of the Queen against the Mayor of Tewkesbury (3 Q. B. 629), decided so recently as the year 1868, and which, so far as I can understand, has never since been questioned. In that case the facts were these: An election took place of four town councillors. It was decided, in an early stage of the case, that a mayor, the returning officer, cannot return himself; and the law is perfectly well settled that it is a disqualification, and that the returning officer cannot himself be a candidate at the election. The election took place, and the number who voted for four of the candidates, including Mr. Blizard, the mayor, are stated to have been 312; while 143 voted for Mr. Moore, the other candidate. Notice was served upon the mayor, Mr. Blizard, and the assessors, of Mr. Blizard's disqualification, Mr. Blizard having returned himself as one of the town councillors. Proceedings were taken in the Queen's Bench, and it was decreed that his election was void. A mandamus was then issued to have Mr. Moore declared duly elected.

The evidence in the case was that the notice was posted. The number of the constituency was not large, and the notices were posted all around on the polling place, and also scattered on the table. The Court held, that though the fact that Mr. Blizard was mayor and returning officer was known to all the electors, yet there was no presumption of law that they were therefore aware of his legal disqualification as a candidate. And, therefore, the Court refused to admit Mr. Moore to the office.

I therefore, in this case, regret very much that I should have to differ, as I do, from the other members of the Court. I suppose I have come to a wrong conclusion; but I have settled in my own mind, as a matter of fact, that the majority in this case did not know, in fact, at the time when they were voting, that they were voting for a disqualified person.

I am also satisfied that there is no specific finding, that this notice that was served, or that was posted, was known to the majority of the voters.

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Tbere is no way in tbe case of making any distinction between any one voter and tbe entire number of voters who voted for Captain Nolan.

The case, if it does anything, disqualifies every man wbo gave him his vote; that is the number of 2,823.

I cannot come to the conclusion that those 2,823 voters, several of whom (I do not know how many) do not speak the English language, and several of whom, I am satisfied, as a matter of fact, were not at all in the town of Galway during these election proceedings, had knowledge of the disqualification.

It is said that there are eight polling places in the county; that the county is a very extensive one, being, I believe, some 80 or 90 miles in length; and that several of the voters were not able to understand the English language.

I think we are making a decision, the first of its kind, that the constituency of a large county are to be held to bave tbrown away tbeir votes, on a general motion that facts were generally known through the county, without any finding, and without any means of finding, to bow many it was known.

Tbat Captain Nolan was properly unseated, I entertain no doubt. But I am decidedly of opinion that Captain Trench is not entitled to the seat. But this, of course, will not affect the judgment of the Court, which will be tbat the electors had sufficient knowledge of the disqualification by the acts of those parties; and, of course, Captain Trencb will be declared duly elected.

Mr. Justice Keogh.

Mr. Justice *Keogh.*] It now becomes my duty to express my opinion upon this case, this being the first time I have done so since the questions involved were raised before me. I gave no opinion upon the matter in the court at Galway, though there the questions were most ably argued by counsel, and especially so, there as here, by the junior counsel for the Respondent, Mr. MacDermott. I have not given any opinion upon those questions since, but I have heard, and concur in the judgment delivered by Mr. Justice Lawson. On a great constitutional question such as tbis undoubtedly is, involving a knowledge not only of tbe law but of the history and the constitution of England, unfettered by small legal technicalities, I, with confidence, rest my judgment on that which Mr. Justice Lawson has given, supported and sustained as it is by that of Mr. Justice Morris. I regret that there should be any division in the Court; but I cannot see this great case by the lights or authorities which my Lord Chief Justice has brought to bear upon it; and I am happy to be fortified in the conclusions at which this Court has arrived by the authority of that great jurist and magistrate, Lord Denman, Chief Justice of England, wbo, when he believed the liberties of his country were in danger, knew how to use words fit for the occasion and calculated to arrest the attention of the people of England. I stated in the case submitted to this Court, and for the purpose of the questions I reserved, that the electors of the county of Galway had been intimidated by threats and denunciations of temporal injury and spiritual punishment. I now, sitting on this Bench, which I am warned that I occupy at the will of, and in subordination to, powers other than my Sovereign, here declare that I have been obliged to consider this case and to deliver this judgment, viz., that Captain William Le Poer Trench is entitled to be declared the Member for the county of Galway, under many terrible denunciations, both public and private.

GALWAY ELECTION (JUDGMENTS ON SPECIAL CASE).

COPY of the JUDGMENTS on the SPECIAL CASE laid by Mr Justice *Keogh* before the COURT of COMMON PLEAS in *Ireland*, respecting the late GALWAY ELECTION, pronounced by the several JUDGES of that COURT.

(*Sir Colman O'Loghlen.*)

Ordered, by The House of Commons, *to be Printed,*
2 *July* 1872.

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